

APPEAL NO. 032277  
FILED OCTOBER 13, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 17, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 6th and 7th compensable quarters. The appellant (carrier) appeals these determinations. The claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Section 408.142 provides that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with her ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) provides that a good faith effort has been made if the employee "has returned to work in a position which is relatively equal to the injured employee's ability to work." A carrier is not expected to subsidize a business venture and it cannot be used as a subterfuge for a good faith effort to obtain employment. Texas Workers' Compensation Commission Appeal No. 980548, decided May 1, 1998. However, whether a good faith effort is shown is basically a question of fact for the hearing officer, and cases tend to become very fact specific in self-employment situations. Texas Workers' Compensation Commission Appeal No. 982820, decided January 11, 1999. The hearing officer apparently found the claimant's testimony credible regarding his endeavors to establish a successful business; that his efforts were commensurate with his ability to work; and that he met the requirements for SIBs with his self-employment efforts. Nothing in our review of the record reveals that the hearing officer's good faith determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; thus, no sound basis exists for us to disturb the challenged factual determination. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

---

Chris Cowan  
Appeals Judge

CONCUR:

---

Judy L. S. Barnes  
Appeals Judge

---

Edward Vilano  
Appeals Judge